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In re Application of WELLS et al
U.S. Application No.: 09/355,268
Int. Application No.: PCT/GB98/00226
Int. Filing Date: 27 January 1998
Priority Date: 27 January 1997
Attorney Docket No.: 50060-034
For: AUDIO COMPRESSION

DECISION

This is in response to applicants' "Renewed Petition Under 37 CFR 1.181" filed 07 June 2001.

BACKGROUND

On 27 January 1998, applicants filed international application PCT/GB98/00226, which claimed priority of an earlier United Kingdom application filed 27 January 1997. A copy of the international application was communicated to the USPTO from the International Bureau on 30 July 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 13 July 1998, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 27 July 1999.

On 27 July 1999, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, an authorization to charge the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 August 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 05 April 2000, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the present application is abandoned based on applicants' failure to respond to the Notification of Missing Requirements mailed 19 August 1999.

On 13 April 2000, applicants filed a petition to withdraw the holding of abandonment. The petition states that a search of all docketing systems revealed that the Notification of Missing Requirements was never received by applicants. The petition further states that it is accompanied by a copy of a docketing department docket record for the present application and by a copy of an applications department docket record showing items due on 19 September 1999.

On 09 May 2001, the PCT Legal Office of the USPTO dismissed the 13 April 2001 petition on grounds that it did not contain a statement that the application file jacket was searched and that it did not sufficiently explain the scope of the applications department docket record.

On 07 June 2001, applicants filed the present renewed petition. The renewed petition states that the application file jacket was searched and that such search revealed that the Notification of Missing Requirements was not received. The renewed petition further states that the applications department docket record lists all firm responses to missing requirements notices due to the USPTO on 19 September 1999.

DISCUSSION

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicants' representative has provided the required statement.

With regard to item (2) above, applicants' representative has provided the required statement.

With regard to item (3) above, applicants' representative has submitted a docketing department docket listing for the present application 09/355,268. Applicants' representative has also submitted an applications department docket record listing all firm responses to missing requirements notices due to the USPTO on 19 September 1999. Both docket records show an absence of any response due to a Notification of Missing Requirements on 19 September 1999.

Having satisfied items (1), (2), and (3), applicants have established with reasonable certainty that the Notification of Missing Requirements mailed 19 August 1999 was not received.

CONCLUSION

For the reasons above, the petition to withdraw the holding of abandonment is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 05 April 2000 is hereby VACATED.

The application has an International Filing Date of 27 January 1998 and a date under 35 U.S.C. 371 of 13 April 2001.

The application is being forwarded to the DO/EO/US for processing in accordance with this decision.



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